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U.S. DISTRICT COURT
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THE FACEBOOK, INC. and MARK ZUCKERBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU, INC. (formerly known as CONNECTU, LLC) PACIFIC NORTHWEST SOFTWARE, INC. WINSTON WILLIAMS, and WAYNE CHANG,

Defendants.

Case No. 5:07-CV-01389-JW

NOTICE OF CROSS-APPEAL BY FACEBOOK, INC. AND MARK ZUCKERBERG

Dockets.Justia.com

Notice is hereby given that Facebook, Inc. and Mark Zuckerberg, Plaintiffs in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order Granting Motion to Dismiss Claims Against Defendants Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra ("ConnectU Founders") entered in this action on November 30, 2007, Exhibit A, and the Order Denying Plaintiffs' Motion for Sanctions, entered in this action on November 30, 2007, Exhibit B. Final Judgment was entered in this action on July 2, 2008, Exhibit C. ConnectU, Inc. filed a Notice of Appeal from the Final Judgment and related orders on July 30, 2008, Exhibit D. The issues raised in this Cross-Appeal need not be reached if this Court affirms the Judgment and orders appealed from in Exhibit D.

Dated: August 13, 2008

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EXHIBIT A

E-FILED 11/30/07

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC., et al Plaintiffs, v. CONNECTU LLC, et al. Defendants.	Case No. C 07-01389 RS **ORDER GRANTING MOTION TO DISMISS CLAIMS AGAINST DEFENDANTS CAMERON WINKLEVOSS, TYLER WINKLEVOSS, AND DIVYA NARENDRA**

I. INTRODUCTION

Defendants Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra move to dismiss the claims against them on grounds that prior to removal of this action to this court, the Santa Clara Superior Court ruled that none of them was subject to personal jurisdiction in California. Defendants contend that ruling precludes plaintiffs relitigating personal jurisdiction here. Plaintiffs Facebook and Mark Zuckerberg (collectively "Facebook"), in turn contend that they have discovered and pleaded new facts that were not before the Superior Court that make reconsideration of jurisdiction appropriate and that support personal jurisdiction over the moving defendants. Although Facebook has discovered additional factual *detail* and have incorporated numerous allegations bearing on jurisdiction into the amended complaint, it has not shown that the basic facts on which it now relies are any different from those presented to the Superior Court. Accordingly, the Superior Court's decision remains conclusive here, and the motion to dismiss will be granted.

II. BACKGROUND

The general background of this action has been described in prior orders and will not be repeated here. Relevant to this motion is the following: When this action was initiated in Santa Clara Superior Court, the named defendants included Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra. The Winklevosses and Narendra are three founders of defendant ConnectU.[1] They promptly filed a motion to quash service of summons, arguing that they were not subject to personal jurisdiction in California. ConnectU itself did not contest jurisdiction.

Facebook sought and was granted leave to take jurisdictional discovery before the motion to quash was heard. Even prior to the filing of this action, Facebook had been taking discovery from ConnectU in connection with litigation between them pending in the District of Massachusetts. By virtue of the Massachusetts discovery, Facebook was aware before this action was filed that Winston Williams of Pacific Northwest Software ("PNS") had assisted ConnectU in collecting email addresses from the Facebook website and that it had used those addresses with the "social butterfly" software. In the jurisdictional discovery, Facebook learned additional facts regarding PNS's development of an "automated" process for sending emails to addresses found on the Facebook site, as well as facts regarding the individual defendants' prior manual collection of addresses from the site.

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[1] There has been significant controversy regarding the role Narendra originally was expected to have and regarding how and when anyone became actual "members" of the ConnectU LLC. Those matters are discussed in a contemporaneously-filed order denying plaintiffs' sanction motion. Regardless of that controversy, the characterization of Narendra as a "founder" appears fair.

In opposing the motion to quash, Facebook cited to and relied on evidence regarding both the manual collection of email addresses and the subsequent automatic processes. For reasons it did not explain, the Superior Court rejected Facebook's arguments and granted the motion to quash.[2]

Facebook subsequently filed an amended complaint in the Superior Court that added certain claims but that omitted the Winklevosses and Narendra as defendants. Based on claims that had been added under federal law, ConnectU then removed the action to this Court and brought a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Court granted that motion in part, with leave to amend. Facebook then filed a second amended complaint that not only addressed the matters that had been raised by the motion to dismiss, but that also (1) added Mark Zuckerberg as a plaintiff, (2) added certain new individual defendants, and (3) renamed as defendants the Winklevoss brothers and Narendra.

Defendants objected to Facebook adding parties without leave of Court. By order issued June 14, 2007, the Court in effect granted Facebook *post hoc* leave to add the parties, but without prejudice to any substantive arguments as to why they should not be made parties. The present motion to dismiss followed.

III. DISCUSSION

Although the parties have characterized the legal precedents differently, there is no real conflict in their respective positions, or in the cases they cite, as to the circumstances under which a prior state court jurisdictional determination will be deemed conclusive in a subsequent federal proceeding. Put simply, if a plaintiff can show *new and different* facts supporting jurisdiction, then the prior determination may be revisited. See *Kendall v. Overseas Dev. Corp.*, 700 F.2d 536, 539 (9th Cir. 1983) ("the dispositive question is whether [plaintiff] pleaded any new facts in the federal litigation that would support a different result on the issue of jurisdiction."). If, however, the facts are those that the prior court found insufficient to support jurisdiction, then "even if wrong, an earlier decision involving the same issue and the same parties, 'is as conclusive as a correct' one." *Gupta v. Thai Airways Intern. Ltd.*, 487 F.3d. 759, 767 (9th Cir. 2007) (quoting *MIB, Inc. v. Superior Court*, 106 Cal.App.3d 228, 235).

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[2]Howard Winklevoss, the father of Tyler and Cameron Winklevoss, was also named as a defendant and was a party to the motion to quash. Facebook has not attempted to bring him back into this litigation.

Here, Facebook insists it has discovered and pleaded significant new evidence bearing on personal jurisdiction over the Winklevoss brothers and Narendra. Certainly the second amended complaint appears to have been drafted with an eye to preempting the argument that personal jurisdiction is lacking; the complaint is replete with assertions that defendants acted with intent and knowledge that their activities would have effects in this forum. Nevertheless, Facebook has not shown that any of the evidence on which it now relies is materially different from that it previously presented to the Superior Court. At most, Facebook has now garnered additional *details*, but the basic conduct it contends is sufficient to give rise to jurisdiction is the *same* conduct it pointed to in the state court motion to quash proceedings.

As noted, the Superior Court did not explain the basis for its decision, leaving it uncertain as to precisely what evidence might or might not have been sufficient to cause it to reach a different result. Because Facebook is relying now on "contacts" that do not differ significantly in kind or in quantity than those it presented during the motion to quash, however, there is no particular reason to believe the "new" details would have changed the result.

Although Facebook attempts to argue that a different result is warranted in light of "new" evidence, it is apparent that Facebook actually believes the Superior Court simply got it wrong.[3] Particularly given that this Court has demonstrated an unwillingness to accept the so-called "fiduciary shield" argument, Facebook appears to believe that it can obtain a different result by arguing the merits better or slightly differently.[4] Rearguing the same basic facts, however, is not permissible. Even if the Superior Court reached an incorrect legal determination, the outcome is conclusive. Facebook "does not now get a do-over." *Gupta*, *supra*, 487 F.3d at 767.

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[3] In its motion for sanctions, Facebook candidly suggests that the Superior Court accepted defendants' legally untenable argument that actions they took on behalf of ConnectU did not count as personal contacts with the forum. Although the order regarding the sanctions motion filed contemporaneously with this decision rejects that conclusion as unduly speculative, it does show that in Facebook's view, the Superior Court simply erred.

[4] At the hearing, defense counsel effectively conceded that if this Court were free to reconsider the issues, then under the reasoning this Court employed in denying the motion to dismiss brought by Winston Williams and PNS, personal jurisdiction would be proper over

IV. CONCLUSION

For the reasons set forth above the motion to dismiss is granted.

IT IS SO ORDERED.

Dated: November 30, 2007

RICHARD SEEBORG
United States Magistrate Judge

Cameron Winklevoss. Defendants contend that even in those circumstances personal jurisdiction would not be proper over Tyler Winklevoss or Narendra because there is no evidence they personally participated in any allegedly wrongful conduct at a time when Facebook was located in California.

EXHIBIT B

E-FILED 11/30/07

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC., et al. Plaintiffs, v. CONNECTU LLC, et al. Defendants.	Case No. C 07-01389 RS **ORDER DENYING PLAINTIFF'S MOTION FOR SANCTIONS**

I. INTRODUCTION

Plaintiff Facebook moves to impose sanctions against defendants ConnectU, Cameron Winklevoss, Tyler Winklevoss, Divya Narendra, and their counsel. Although the motion is based on a number of different allegedly wrongful acts, all of the claimed misconduct relates to apparent inconsistencies between the legal and factual positions taken by defendants in this and another action pending between Facebook and ConnectU in Massachusetts. Whether or not the positions taken by ConnectU in the Massachusetts action are fully reconcilable with the positions taken, and discovery responses provided, in *this* action, Facebook has not shown that defendants made any materially false discovery responses or representations here. While Facebook has labored mightily to characterize the alleged wrongdoing as having occurred in this proceeding, it is apparent that the true thrust of its argument is that ConnectU took positions *in Massachusetts* that were not tenable in light of its essentially *truthful* admissions in this action. It is for the Massachusetts court, if at all, to decide whether the representations made to it and the positions taken in those proceedings were based on truthful testimony, within the bounds of proper advocacy. Accordingly, the motion for sanctions will be denied.

II. BACKGROUND

As set forth in greater detail in prior orders, this action arises from Facebook's allegations that defendants accessed its website, "harvested" the email addresses of its members, and then sent those persons email soliciting them to become ConnectU members.[1] As also previously described, the initial dispute between the parties arose from ConnectU's claim that Mark Zuckerberg, Facebook's founder, originally agreed to assist ConnectU's founders in developing their website and business, but that he instead misappropriated their intellectual property to establish Facebook. That claim forms the basis of the litigation filed in the District of Massachussetts by ConnectU against Facebook.

The present motion for sanctions grows out of an unfortunate series of events and misguided legal arguments that led ConnectU to take positions in the Massachussets action that arguably were inconsistent with the positions it took and discovery responses it provided here. Specifically, when this action was originally filed in Santa Clara Superior Court, the named defendants included the three ConnectU founders, Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra.[2] Although ConnectU did not contest jurisdiction, all four of the individual defendants moved to quash service of summons, based on an argument that they were not subject to personal jurisdiction in California. The individual defendants' motion rested in large part on an argument that any acts they undertook on behalf of ConnectU could not be considered as "contacts" in evaluating whether "minimum contacts" existed to assert personal jurisdiction over them.[3] Consistent with that argument, defendants not surprisingly represented in discovery responses and in declarations filed with the court that at all relevant times Cameron Winklevoss, Tyler Winklevoss and Divya Narendra had acted not in their capacities as individuals, but in their capacities as "members" of ConnectU.[4] For example, in response to Interrogatory No. 14, propounded while this case was maintained in Superior Court, defendants stated, "[m]embers of ConnectU include Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra, as set forth in the Limited Liability Company Operating Agreement . . . . These persons have all been Members since ConnectU was formed."

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[1] No proceedings on the merits have yet taken place, and nothing in this order should be construed as suggesting otherwise. It does not presently appear, however, that ConnectU disputes the general outline of Facebook's allegations, but ConnectU does vigorously dispute whether any such conduct was wrongful.

[2] The complaint also named as a defendant Howard Winklevoss, who is the father of the Winklevoss brothers and who apparently played some role in funding and supporting the development of ConnectU. Facebook, however, has not challenged his dismissal from this action and is not seeking to reinstate him as a defendant.

Facebook's opposition to the individual defendants' motion to quash did not challenge the assertion that they had acted on "behalf" of ConnectU; rather Facebook argued, correctly, that in the context of tort claims, the fact that an individual defendant acts on behalf of a corporate entity is not a jurisdictional shield. See *Calder v. Jones*, 465 U.S. 783, 790 (1984) (defendants' "status as employees does not somehow insulate them from jurisdiction.); see also *Natural Resources, Inc. v. Wineberg*, 349 F.2d 685 (9th Cir. 1965) ("It is elementary that a person is personally responsible for his own torts.").

In its written opposition to this motion for sanctions, ConnectU endorses the argument Facebook made to the Superior Court. "Facebook had done thorough and compelling research proving this membership issue to be irrelevant . . . . Facebook's opposition convincingly established that a person's official status or capacity in a fictitious entity cannot immunize that person from the personal jurisdiction of a forum, even where the alleged wrongful action were taken in that person's official capacity." Opposition at 6:26-7:3.

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[3] In support of this argument before the Santa Clara Superior Court, defendants cited *Mihlon v. Superior Court*, 169 Cal.App.3d 703 (1985). In later proceedings before this Court, defendants relied on *Colt Studio, Inc. v. Badpuppy Enterprise*, 75 F.Supp.2d 1104, (C.D.Cal.1999) to make the same argument that the acts of defendants Winston Williams and Pacific Northwest Software undertaken on behalf of ConnectU were not jurisdictionally significant. *Colt Studio* relied on and followed *Milhon.*

[4] ConnectU was initially established as a limited liability company (LLC) in Delaware under the laws of that state. The concept of membership in an LLC is discussed further below. ConnectU apparently now is a corporation, but that has no bearing on the issues in this motion.

Although ConnectU has now essentially conceded that jurisdiction in this proceeding does not turn on the status of the Winklevoss brothers and Narendra as members in, or representatives of, ConnectU, its discovery responses and declarations asserting that the Winklevosses and Narendra were all members of ConnectU presented a jurisdictional problem in the Massachusetts proceeding. That action was commenced in Federal court based solely on diversity jurisdiction. For purposes of diversity jurisdiction, an LLC is treated like a partnership; thus the citizenship of each of its members is relevant. Were Narendra's citizenship to be considered, ConnectU would not have been able to establish a basis for diversity jurisdiction in the Massachusetts action. Accordingly, ConnectU took the position in the Massachusetts litigation that Narendra had *not* been a "member" of ConnectU as of the date that action was filed. Specifically, Narendra filed a declaration stating, "[b]ecause our respective roles, contributions, and shares in the company were uncertain, I was not made a Member of ConnectU LLC until well after September 2, 2004."

Facebook did not hesitate to call the Massachusetts court's attention to the apparent inconsistencies in ConnectU's positions. The Massachussets court ultimately held evidentiary hearings and issued a lengthy written decision on the question of who were members of ConnectU at the time the Massachusetts action was filed. The Massachusetts court's decision, and the record in this action, show all of the following:

• ConnectU was formed as an LLC under Delaware law in April of 2004. Although the members of an LLC *may* be specified in the formation documents, there is no requirement to do so. In ConnectU's case, its formation documents did not identify any members.

• At the time the LLC was formed, the Winklevoss brothers and Narendra were more focused on launching the ConnectU website than on legal formalities, and the question of who was or was not to be a member of the LLC was given little consideration. Nevertheless, there was at least some general understanding that the Winklevoss brothers would be members, and that Narendra would not. Narendra was, however, fully involved in developing the ConnectU website.

• In August of 2005, an Operating Agreement was executed for the LLC. Under the terms of that agreement, Narendra and the others were all deemed to be founding members of the LLC, retroactive to the date of its formation. Such retroactive agreements are permissible and valid under Delaware law.

• Although the Massachusetts court found the retroactive provision of the Operating Agreement to be "admittedly enforceable under Delaware law," it concluded that the existence of that agreement had no bearing on the question of who were members of the LLC at the time the complaint was filed for the purposes of diversity jurisdiction. The court reasoned that the existence or non-existence of diversity had to be analyzed under a "snapshot" of the "facts as they existed" on the day the complaint was filed, and that the Operating Agreement, formed nearly one year later, was therefore irrelevant.

• For purposes of its diversity jurisdiction analysis, therefore, the Massachusetts court concluded that ConnectU had *no* members as of the date the Massachusetts complaint was filed. That conclusion, however, in no way undermines the validity of the Operating Agreement nor does it change the underlying facts that Narendra was directly involved with the development of the ConnectU website from the outset.

• The Massachusetts court expressly noted that Narendra's declaration in that action was not necessarily "completely contradictory" to the response to Interrogatory No. 14. Indeed, the response to Interrogatory No. 14 refers specifically to the Operating Agreement, which made Narendra (and the others) members of the LLC *retroactively*. Narendra's declaration in the Massachusetts proceedings, in contrast, at least arguably is neither inaccurate nor inconsistent, because it asserts only that *as of* the date the complaint was filed, long *before* the Operating Agreement with its retroactive provisions came into being, Narendra was not a member. The Massachusetts court ultimately applied exactly such a snapshot in its jurisdictional analysis, albeit with the effect of concluding that ConnectU had *no* members, rather than only concluding that Narendra was not a member as ConnectU had urged.

III. DISCUSSION

A. Proceedings in Superior Court

Facebook asserts that defendants committed fraud and proffered false testimony in this action prior to its removal from Superior Court. It is not entirely clear, however, what Facebook contends was false with respect to any of the factual positions taken by defendants in discovery responses or in pleadings while the case was pending in that forum. It seems that Facebook may be arguing it was "false" for Narendra to claim to have been a member of ConnectU from its inception, given the evidence that he was *not* considered a member at the time the LLC was formed, and was never actually made a member until the Operating Agreement was executed in August of 2005. The response to Interrogatory No. 14, however, expressly referenced the Operating Agreement and Facebook has not challenged the propriety of its retroactivity under Delaware law.[5]

Facebook also seems to be arguing that defendants "tricked" the Superior Court into granting the motion to quash based on the argument that they had acted only as "members" of ConnectU. There are at least two problems with this argument. First, because the Superior Court granted the motion to quash without explaining its reasoning, it would be entirely speculative to conclude that it did so based on the argument that defendants acted solely on behalf of ConnectU, given that ConnectU had advanced other independent arguments as to why jurisdiction did not exist. Second, even assuming the Superior Court did accept that argument, Facebook has not shown that ConnectU did anything sanctionable to obtain such a result. The facts presented by ConnectU were essentially true. Although the legal formalities necessary to make the Winklevosses and Narendra actual members of ConnectU did not take place until the retroactive Operating Agreement was executed, that does not change the fact that they were at all times acting on behalf of ConnectU. The legal authority presented by ConnectU has never been expressly overruled.[6]

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[5] Facebook points to the fact that other discovery responses asserted that the Winkelvosses and Narendra acted as members of ConnectU without expressly referencing the Operating Agreement. It is not clear why Facebook deems this significant, given that the response to Interrogatory No. 14 set out the basis of the membership claim.

Finally, Facebook appears to be making at least some argument that it was improper for any of the defendants to argue that they were acting as members of ConnectU during the summer of 2004 given that the Operating Agreement was not executed until the fall of 2005. The fact that defendants may have failed to formalize their legal status until after the fact does not render their contentions that they were "members" in 2004 sanctionable.

B. Discovery obligations

Facebook asserts that Narendra has "admitted" that he answered and verified written discovery without reviewing the questions asked. The testimony on which Facebook relies, however, shows only that Narendra did not have the actual form interrogatories in front of him at the time he signed the responses. Narendra stated that, "the questions are in a completely different document," thereby implying that he had in fact seen the questions at some point in time. The Court sees no reason to presume that there was any impropriety in the process by which Narendra, with the assistance of his lawyers, responded to the written discovery. That he may have been provided a final version of the answers to verify without having the questions in front of him at that particular moment does not establish that there was anything reckless or cavalier in Narendra's approach to complying with his discovery obligations.

Facebook also suggests that ConnectU failed to produce a few documents in this proceeding that it later offered as evidence in the Massachusetts case. In the course of extensive discovery, it is not unusual for documents to turn up that were not produced initially. In appropriate circumstances, sanctions can be imposed where a failure to produce documents appears to reflect a willful indifference to complying with discovery obligations, rather than mere inadvertence. Here, Facebook has not shown there is any reason to believe that the documents at issue were not produced earlier through any sanctionable neglect.

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[6] As mentioned above, ConnectU's opposition to this motion fully acknowledges that the fact that individuals may have acted on behalf of an entity does not shield them from personal jurisdiction in the tort context. Moreover, the opposition expressly states that it came to this understanding when it reviewed Facebook's opposition to the motion to quash in Superior Court. Indeed, ConnectU contends it abandoned the argument by making no reference to it in the reply brief in support of the motion to quash. It is troubling that defendants presented the same argument to this Court in connection with the motion to dismiss of Winston Williams and Pacific Northwest Software notwithstanding their assertion that they concluded it was not tenable upon review of Facebook's opposition to the motion to quash.

C. Proceedings in Massachusetts

Facebook argues that ConnectU attempted to "manufacture" diversity jurisdiction in Massachusetts by recanting on the statements it made here that Narendra was a "member" of ConnectU from its inception. As reflected above, the positions taken by ConnectU here and in Massachusetts were not *wholly* irreconcilable. Even assuming, however, that ConnectU exceeded the bounds of reasonable advocacy in the arguments and evidence it submitted in Massachusetts , that is a matter for that court to evaluate and address as it sees fit. It is worth noting, however, that the Massachusetts court ultimately *agreed*, albeit for different reasons, that Narendra was *not* a member of ConnectU at the relevant time for purposes of jurisdiction, but the court went on to conclude it lacked diversity jurisdiction in any event.

IV. CONCLUSION

For the reasons set forth above the motion for sanctions is denied.

IT IS SO ORDERED.

Dated: November 30, 2007

RICHARD SEEBORG
United States Magistrate Judge

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

The Facebook, Inc., et al., Plaintiffs, v. ConnectU, Inc., et al., Defendants. _____________________/	NO. C 07-01389 JW **JUDGMENT ENFORCING SETTLEMENT AGREEMENT**

Pursuant to the Court's June 25, 2008 Order Granting Plaintiffs' Confidential Motion to Enforce the Settlement Agreement (docket item no. 461), the parties appeared before the Court on July 2, 2008 to show cause why a judgment should not be entered. Based on the papers submitted and oral arguments of counsel,

JUDGMENT IS ENTERED ENFORCING "THE TERM SHEET & SETTLEMENT AGREEMENT" AS FOLLOWS:

(1) The Facebook, Inc. and Mark Zuckerberg:

(a) Pursuant to Paragraphs 4 and 7 of the Agreement, unless otherwise ordered by the Court, on or before **August 4, 2008**, The Facebook, Inc. shall deposit with the Master, the amount of cash and the certificates representing the amount of The Facebook, Inc. common shares stated in Paragraph 7 of the Agreement, endorsed for transfer. The following legend shall appear on certificates of The Facebook, Inc. common stock issued pursuant to this Judgment:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER SUCH ACT OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH REGISTRATION IS NOT REQUIRED, OR UNLESS SOLD PURSUANT TO RULE 144 OF SUCH ACT.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AN AGREEMENT WITH REGARD TO THE VOTING OF SUCH SHARES, AS PROVIDED IN THE CERTAIN TERM SHEET & SETTLEMENT AGREEMENT PURSUANT TO WHICH SUCH SHARES WERE ORIGINALLY ISSUED. THE HOLDERS OF SUCH SHARES ARE ENTITLED TO THE SAME ANTI-DILUTION RIGHTS AFFORDED THE ISSUER'S SERIES D PREFERRED STOCK, AS PROVIDED IN SUCH TERM SHEET & SETTLEMENT AGREEMENT. A COPY OF SUCH TERM SHEET & SETTLEMENT AGREEMENT IS ON FILE IN THE OFFICE OF THE SECRETARY OF THE ISSUER.

(b) Pursuant to Paragraphs 2 and 4 of the Agreement, on or before **12 noon on July 9, 2008**, The Facebook, Inc. and Mark Zuckerberg shall submit to the Court for approval a proposed form of release. Upon approval by the Court, the release shall be signed by The Facebook, Inc. and Mark Zuckerberg, and shall have attached to it corporate authority given to the corporate signatory and shall be notarized as to each signatory and shall be immediately deposited with the Master;

(c) Pursuant to Paragraphs 2 and 4 of the Agreement, unless otherwise ordered by the Court, on or before **August 4, 2008**, a legally sufficient dismissal with prejudice of all cases by and between the parties pending as of the date of the Agreement.[1] The dismissal shall recite that each party to the respective litigation shall bear their own attorney fees and costs.

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[1] The other two cases are ConnectU, LLC v. Facebook, Inc., et al., Case No. 1:04-cv-11923-DPW, currently on appeal to the First Circuit Court of Appeals; and ConnectU, Inc., et al. v. Facebook, Inc., et al., Case No. 1:07-cv-10593-DPW, currently pending in the District of Massachusetts.

United States District Court
For the Northern District of California

(2) ConnectU Inc., Cameron Winklevoss, Tyler Vinklevoss, and Divya Narendra:

(a) Pursuant to Paragraphs 4 and 7 of the Agreement, unless otherwise ordered by the Court, on or before **August 4, 2008**, ConnectU Inc. shall deposit with the Master all shares of ConnectU Inc., endorsed for transfer. To the extent the parties to the Agreement do not own any shares of ConnectU Inc., to fulfill the obligation of the transfer of "all ConnectU stock," the parties to the Agreement shall take such actions in their respective corporate and individual capacities as are necessary to effect the deposit with the Master of all shares of ConnectU stock;

(b) Pursuant to Paragraphs 2 and 4 of the Agreement, on or before **12 noon on July 9, 2008**, ConnectU, Inc., Cameron Winklevoss, Tyler Vinklevoss and Divya Narendra shall submit to the Court for approval a proposed form of release. Upon approval by the Court, the release shall be signed by these parties and shall have attached to it corporate authority given to the corporate signatory and shall be notarized as to each signatory and shall be immediately deposited with the Master;

(c) Pursuant to Paragraphs 2 and 4 of the Agreement, unless otherwise ordered by the Court, on or before **August 4, 2008**, a legally sufficient dismissal with prejudice of all cases by and between the parties pending as of the date of the Agreement. The dismissal shall recite that each party to the respective litigation shall bear their own attorney fees and costs.

(3) Upon further order of the Court, the parties shall deposit with the Master such other and further things which will facilitate the orderly exchange of the consideration and shall do the things ordered by the Court to ensure the operational integrity of the business entities that are parties to the Agreement.

(4) The deposits being made with the Master by the parties pursuant to this Judgement shall be transferred out of the deposit by the Master only upon further Order of the Court in enforcement of the Agreement.

The Court retains jurisdiction to enforce this Judgment.

Dated: July 2, 2008

JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: July 2, 2008

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

EXHIBIT D

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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA S.J.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG, Plaintiffs, v. CONNECTU, INC. (formerly known as CONNECTU, LLC), PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, and WAYNE CHANG, Defendants.	Case No. 5:07-CV-01389-JW **NOTICE OF APPEAL BY CONNECTU, INC.**

Notice is hereby given that CONNECTU, INC., defendant in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment Enforcing Settlement Agreement (Docket No. 476) entered in this action on July 2, 2008, and all related orders including but not limited to the June 25, 2008, Order Granting Plaintiffs' Confidential Motion To Enforce The Settlement Agreement (Docket No. 461); and the June 10, 2008, Order Granting In Part and Denying In Part Motions Posted As Docket Items Nos. 366, 374 and 393 (Docket No. 428).

July 30, 2008

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP

/KPR

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU, INC. (formerly known as CONNECTU, LLC), PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, and WAYNE CHANG,

Defendants.

Case No. 5:07-CV-01389-JW

REPRESENTATION STATEMENT OF CONNECTU, INC. PURSUANT TO NINTH CIRCUIT RULE 3-2

ConnectU, Inc. files this Representation Statement in accordance with Ninth Circuit Rule 3-2. The parties to the suit and their respective counsel, including their contact information, are as follows:

Parties:

The Facebook, Inc. (plaintiff)
Mark Zuckerberg (plaintiff)

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